

# **Exhibit 5**

CONFIDENTIAL

Page 1

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 Case No. 1:20-cv-01106

5 - - - - -x

6 KEWAZINGA CORP., :

:

7 Plaintiff, :

:

8 - vs - :

:

9 GOOGLE LLC, :

:

10 Defendant. :

11 - - - - -x

12 June 10, 2020

13 10:57 a.m.

14 Jupiter, Florida

15 \*\*\*CONFIDENTIAL\*\*\*

16  
17  
18  
19  
20 VIDEOTAPED VIRTUAL DEPOSITION UPON  
21 ORAL EXAMINATION OF LEONARD SMALHEISER, held at  
22 the above-mentioned time and place, before Randi  
23 Friedman, a Registered Professional Reporter,  
24 within and for the State of New York.  
25 Job No. CS4135135

## CONFIDENTIAL

<p style="text-align: right;">Page 2</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4 STROOCK &amp; STROOCK &amp; LAVAN, LLP</p> <p>5 Attorneys for Plaintiff</p> <p>6 180 Maiden Lane</p> <p>7 New York, New York 10038</p> <p>8</p> <p>9 BY: SAUNAK K. DESAI, ESQ.</p> <p>10 IAN G. DiBERNARDO, ESQ.</p> <p>11</p> <p>12 DESMARAI, LLP</p> <p>13 Attorneys for Defendant</p> <p>14</p> <p>15 230 Park Avenue</p> <p>16 New York, New York 10169</p> <p>17 BY: ELIZABETH WEYL, ESQ.</p> <p>18 JOHN M. DESMARAI, ESQ.</p> <p>19 STEVEN M. BALCOF, ESQ.</p> <p>20 DAVID A. FREY, ESQ.</p> <p>21</p> <p>22 * * *</p> <p>23</p> <p>24</p> <p>25</p> <p>20 ALSO PRESENT:</p> <p>21 Marcelo Rivera - Videographer</p>	<p style="text-align: right;">Page 4</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 MR. VIDEOGRAPHER: Good morning.</p> <p>3 We're going on the record at 10:57 a.m. on</p> <p>4 June 10th, 2020, and this deposition is</p> <p>5 being taken remotely of Mr. Leonard</p> <p>6 Smalheiser in the matter, Kewazinga Corp.</p> <p>7 versus Google, LLC.</p> <p>8 My name is Marcelo Rivera from the</p> <p>9 firm, Veritext Legal Solutions, and I am the</p> <p>10 videographer. The court reporter is Randi</p> <p>11 Friedman in association with Veritext Legal</p> <p>12 Solutions. I am not related to any party in</p> <p>13 this action, nor am I financially interested</p> <p>14 in the outcome.</p> <p>15 Counsel and all present remotely</p> <p>16 will now state their appearance and</p> <p>17 affiliations for the record. If there are</p> <p>18 any objections to proceeding, please state</p> <p>19 them at the time of your appearance,</p> <p>20 beginning with noticing attorney.</p> <p>21 MS. WEYL: This is Elizabeth Weyl</p> <p>22 from Desmarais, LLP representing Google LLC.</p> <p>23 And on the line with me, but will not be</p> <p>24 participating in the deposition is Steven</p> <p>25 Balcof, John Desmarais and David Frey.</p>
<p style="text-align: right;">Page 3</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 STIPULATIONS</p> <p>3 IT IS HEREBY STIPULATED, by and between</p> <p>4 the attorneys for the respective parties hereto,</p> <p>5 that:</p> <p>6 All rights provided by the C.P.L.R.,</p> <p>7 and Part 221 of the Uniform Rules for the Conduct</p> <p>8 of Depositions, including the right to object to</p> <p>9 any question, except as to the form, or to move</p> <p>10 to strike any testimony at this examination is</p> <p>11 reserved; and in addition, the failure to object</p> <p>12 to any question or to move to strike any</p> <p>13 testimony at this examination shall not be a bar</p> <p>14 or a waiver to make such motion at, and is</p> <p>15 reserved to, the time of this action.</p> <p>16 This deposition may be sworn to by the</p> <p>17 witness being examined before a Notary Public</p> <p>18 other than the Notary Public before whom this</p> <p>19 examination was begun, but the failure to do so</p> <p>20 or to return the original of this deposition to</p> <p>21 counsel, shall not be deemed a waiver or the</p> <p>22 rights provided by Rule 3116, C.P.L.R., and shall</p> <p>23 be controlled thereby.</p> <p>24 The filing of the original of this</p> <p>25 deposition is waived.</p>	<p style="text-align: right;">Page 5</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 MR. DESAI: On behalf of</p> <p>3 plaintiff, Kewazinga Corp., this is Saunak</p> <p>4 Desai of Stroock &amp; Stroock &amp; Lavan. And</p> <p>5 with me on the line is Ian DiBernardo, also</p> <p>6 from Stroock &amp; Stroock &amp; Lavan.</p> <p>7 MR. VIDEOGRAPHER: Will the court</p> <p>8 reporter please swear in the witness.</p> <p>9 * * *</p> <p>10 LEONARD SMALHEISER, the witness</p> <p>11 herein, after first having been duly sworn,</p> <p>12 was examined and testified as follows:</p> <p>13 * * *</p> <p>14 MR. VIDEOGRAPHER: You may</p> <p>15 proceed, counsel.</p> <p>16 MS. WEYL: Thank you.</p> <p>17 EXAMINATION</p> <p>18 BY MS. WEYL:</p> <p>19 Q Good morning, Mr. Smalheiser. My name</p> <p>20 is Elizabeth Weyl and I'll be taking your</p> <p>21 deposition today.</p> <p>22 Can you please state your full name</p> <p>23 for the record?</p> <p>24 A My full name is Leonard Smalheiser.</p> <p>25 Q And where are you located, Mr.</p>

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<p style="text-align: right;">Page 30</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 A [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 MR. DESAI: Objection, form.</p> <p>11 BY MS. WEYL:</p> <p>12 [REDACTED]</p> <p>13 MR. DESAI: Same objection.</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 BY MS. WEYL:</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 MR. DESAI: Objection to form.</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">Page 32</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 restate that question?</p> <p>3 BY MS. WEYL:</p> <p>4 Q In that in-person meeting, one of the</p> <p>5 goals of that meeting was to resolve Kewazinga's</p> <p>6 claims against Google; is that correct?</p> <p>7 MR. DESAI: Objection to form.</p> <p>8 THE WITNESS: That is correct.</p> <p>9 BY MS. WEYL:</p> <p>10 Q And the licensing demand that</p> <p>11 Kewazinga made in that meeting would have been</p> <p>12 geared towards at least resolving the patents</p> <p>13 that Kewazinga asserted against Google in 2013;</p> <p>14 is that correct?</p> <p>15 MR. DESAI: Same objection.</p> <p>16 THE WITNESS: That is correct,</p> <p>17 without any discussion about exactly what</p> <p>18 that amount of money might provide Google in</p> <p>19 terms of licensing.</p> <p>20 BY MS. WEYL:</p> <p>21 Q And it was your impression that a</p> <p>22 license from Kewazinga to Google would cover all</p> <p>23 patents that were issued to Kewazinga in the</p> <p>24 future; correct?</p> <p>25 MR. DESAI: Objection to form.</p>
<p style="text-align: right;">Page 31</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 BY MS. WEYL:</p> <p>3 Q Would all of Kewazinga's patents be</p> <p>4 included in this licensing demand?</p> <p>5 MR. DESAI: Objection to form.</p> <p>6 THE WITNESS: This was a very</p> <p>7 informal conversation, and I'm not sure that</p> <p>8 any specificity was associated with that</p> <p>9 number and what it represented.</p> <p>10 BY MS. WEYL:</p> <p>11 Q But the licensing demand would include</p> <p>12 at least the '325 and the '226 patents; correct?</p> <p>13 A As mentioned, this was a very general</p> <p>14 conversation, and there were no details discussed</p> <p>15 or explored about what that number would</p> <p>16 represent.</p> <p>17 Q This meeting was during the 2013</p> <p>18 litigation that Kewazinga brought against Google;</p> <p>19 is that correct?</p> <p>20 A That is correct.</p> <p>21 Q And so this settlement demand would be</p> <p>22 related to resolving Kewazinga's claims against</p> <p>23 Google in 2013; is that correct?</p> <p>24 MR. DESAI: Objection to form.</p> <p>25 THE WITNESS: Could you please</p>	<p style="text-align: right;">Page 33</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 THE WITNESS: No, that's not</p> <p>3 correct.</p> <p>4 BY MS. WEYL:</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 MR. DESAI: Objection to form.</p> <p>9 That mischaracterizes prior testimony.</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 BY MS. WEYL:</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 MR. DESAI: Objection to form.</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 BY MS. WEYL:</p> <p>25 Q [REDACTED]</p>

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<p style="text-align: right;">Page 54</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 BY MS. WEYL:</p> <p>3 Q But you understand that Google does</p> <p>4 invest in Street View; is that correct?</p> <p>5 MR. DESAI: Objection to form.</p> <p>6 THE WITNESS: I can only assume</p> <p>7 that they are, because I don't have access</p> <p>8 to metrics that tell me that they are.</p> <p>9 BY MS. WEYL:</p> <p>10 Q So based on your understanding of --</p> <p>11 without needing to consider any metrics about</p> <p>12 Street View, what is your understanding of the</p> <p>13 amount of resources that Google has devoted to</p> <p>14 Street View from 2013 to 2020?</p> <p>15 MR. DESAI: Objection to form.</p> <p>16 THE WITNESS: I could not begin to</p> <p>17 tell you what that amount of money or what</p> <p>18 that number is. I don't know.</p> <p>19 BY MS. WEYL:</p> <p>20 Q But you are aware that Google invested</p> <p>21 in its Street View service between the years of</p> <p>22 2013 and 2020; is that correct?</p> <p>23 MR. DESAI: Same objection.</p> <p>24 THE WITNESS: I'm sorry. There</p> <p>25 was an unavoidable noise outside my location</p>	<p style="text-align: right;">Page 56</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 on it. I don't know.</p> <p>3 BY MS. WEYL:</p> <p>4 Q But you're aware that Google continued</p> <p>5 to provide its Street View service at least</p> <p>6 between the years of 2013 and 2020; is that</p> <p>7 correct?</p> <p>8 A I believe that they continued to</p> <p>9 provide that service, to the best of my</p> <p>10 knowledge.</p> <p>11 Q And you're aware that between the</p> <p>12 years of 2013 and 2020, Google expanded its</p> <p>13 coverage of the Street View service?</p> <p>14 MR. DESAI: Objection to form.</p> <p>15 THE WITNESS: I don't know</p> <p>16 specifically how Google's coverage changed</p> <p>17 in between those years.</p> <p>18 BY MS. WEYL:</p> <p>19 Q In 2013, did you understand that</p> <p>20 Google's Street View service was an important</p> <p>21 feature to Google's products?</p> <p>22 MR. DESAI: Objection to form.</p> <p>23 THE WITNESS: It was my assumption</p> <p>24 that it was an important asset for Google.</p> <p>25</p>
<p style="text-align: right;">Page 55</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 and I didn't want everyone to have to hear</p> <p>3 it.</p> <p>4 BY MS. WEYL:</p> <p>5 Q No problem at all.</p> <p>6 So you were aware that Google invested</p> <p>7 in its Street View service between the years of</p> <p>8 2013 and 2020; is that correct?</p> <p>9 MR. DESAI: Objection to form.</p> <p>10 THE WITNESS: I cannot quantify</p> <p>11 whether or not Google spent money on Street</p> <p>12 View in between those years or how much they</p> <p>13 might have spent.</p> <p>14 BY MS. WEYL:</p> <p>15 Q But you understand that Google --</p> <p>16 strike that.</p> <p>17 So you have no understanding of</p> <p>18 whether Google invested any resources in the</p> <p>19 Street View service between 2013 and 2020; is</p> <p>20 that correct?</p> <p>21 MR. DESAI: Objection to form.</p> <p>22 THE WITNESS: As mentioned, I</p> <p>23 can't quantify the amount of money that</p> <p>24 Google spent in between those years or if</p> <p>25 they spent that money. I can't put a number</p>	<p style="text-align: right;">Page 57</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 BY MS. WEYL:</p> <p>3 Q And do you understand that after the</p> <p>4 2013 litigation was dismissed, Google continued</p> <p>5 to use its Street View service; is that right?</p> <p>6 A I believe that Google did provide</p> <p>7 their Street View service after that case was</p> <p>8 dismissed without prejudice.</p> <p>9 Q And in 2014, Google provided its</p> <p>10 Street View service to users; is that correct?</p> <p>11 A I could not say definitively that it</p> <p>12 did. It would be an assumption that it did, but</p> <p>13 I don't follow such matters.</p> <p>14 Q Did you use Google Street View service</p> <p>15 in 2014?</p> <p>16 A I may have. I can't be certain.</p> <p>17 Q Did you use Google Street View service</p> <p>18 in 2015?</p> <p>19 A I may have. I can't be certain.</p> <p>20 Q Were you aware that Google's Street</p> <p>21 View service was still being offered in 2015?</p> <p>22 A I had no reason to not believe it was</p> <p>23 still being offered. I just can't be certain</p> <p>24 because I have not made notes about my Google</p> <p>25 Street View usage.</p>

15 (Pages 54 - 57)

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<p style="text-align: right;">Page 70</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 BY MS. WEYL:</p> <p>3 Q What was the purpose of these</p> <p>4 documents?</p> <p>5 A The purpose of these documents were to</p> <p>6 try to determine the level of interest by other</p> <p>7 companies in Kewazinga's -- in Kewazinga's</p> <p>8 products.</p> <p>9 Q How were these other companies</p> <p>10 identified?</p> <p>11 MR. DESAI: Objection to form.</p> <p>12 THE WITNESS: I'm sorry. I need</p> <p>13 to ask you to clarify that last question.</p> <p>14 BY MS. WEYL:</p> <p>15 Q Certainly.</p> <p>16 You stated that you worked on drafting</p> <p>17 documents for the purpose of trying to determine</p> <p>18 the level of interest by other companies in</p> <p>19 Kewazinga's products.</p> <p>20 My question is, how did you identify</p> <p>21 what companies to contact?</p> <p>22 MR. DESAI: Objection to form, and</p> <p>23 to the extent it mischaracterizes prior</p> <p>24 testimony.</p> <p>25 THE WITNESS: As a clarification,</p>	<p style="text-align: right;">Page 72</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 BY MS. WEYL:</p> <p>3 Q And what companies did Kewazinga</p> <p>4 contact?</p> <p>5 MR. DESAI: Same objection.</p> <p>6 THE WITNESS: I can't recall the</p> <p>7 names of the companies that were contacted</p> <p>8 at that time, except for maybe a couple.</p> <p>9 BY MS. WEYL:</p> <p>10 Q And what companies were those that you</p> <p>11 can recall?</p> <p>12 A The companies that come to mind</p> <p>13 include Google and Microsoft. I believe Cisco.</p> <p>14 And maybe Verizon. And there may be others, but</p> <p>15 I can't recall them as I sit here today.</p> <p>16 Q Do you recall what companies Kewazinga</p> <p>17 contacted in the 2005 and 2006 timeframe?</p> <p>18 MR. DESAI: Objection to form.</p> <p>19 THE WITNESS: I believe</p> <p>20 Kewazinga -- I'm sorry. Let me answer the</p> <p>21 question. Yes, I have a general</p> <p>22 recollection, but I don't remember all of</p> <p>23 them.</p> <p>24 BY MS. WEYL:</p> <p>25 Q Did Kewazinga contact Google in the</p>
<p style="text-align: right;">Page 71</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 I didn't say I drafted the documents. I</p> <p>3 said I contributed to the drafting of the</p> <p>4 documents. And in terms of identifying</p> <p>5 which companies, which I think is what your</p> <p>6 question is, we, as a group, were trying to</p> <p>7 look for companies where there would be some</p> <p>8 synergy between what the companies offered</p> <p>9 or might want to offer, and what Kewazinga</p> <p>10 had to offer.</p> <p>11 BY MS. WEYL:</p> <p>12 Q What companies have you identified as</p> <p>13 potential companies that could provide synergy</p> <p>14 with Kewazinga?</p> <p>15 MR. DESAI: Objection to form.</p> <p>16 THE WITNESS: I think I need you</p> <p>17 to clarify that question, please.</p> <p>18 BY MS. WEYL:</p> <p>19 Q Did Kewazinga contact any other</p> <p>20 companies that it wanted to form a partnership</p> <p>21 with?</p> <p>22 MR. DESAI: Objection to form.</p> <p>23 THE WITNESS: I believe it did</p> <p>24 make contact, yes.</p> <p>25</p>	<p style="text-align: right;">Page 73</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 2005 and 2006 timeframe?</p> <p>3 A Yes, I believe that is correct.</p> <p>4 Q And why did Kewazinga contact Google</p> <p>5 in the 2005 and 2006 timeframe?</p> <p>6 A I believe Kewazinga thought that</p> <p>7 Google could -- would be interested in and could</p> <p>8 benefit from Kewazinga's technology.</p> <p>9 Q Did Kewazinga contact Microsoft in the</p> <p>10 2005 and 2006 timeframe?</p> <p>11 A I can't be certain about 2005, but I</p> <p>12 believe they were contacted by Kewazinga in the</p> <p>13 2006 timeframe.</p> <p>14 Q Why did Kewazinga contact Microsoft in</p> <p>15 the 2006 timeframe?</p> <p>16 A I believe that Kewazinga thought that</p> <p>17 Microsoft might benefit from Kewazinga's</p> <p>18 technology.</p> <p>19 Q Did Kewazinga contact Cisco in the</p> <p>20 2005/2006 timeframe?</p> <p>21 A I can't be certain of the date when</p> <p>22 Kewazinga contacted Cisco.</p> <p>23 Q Do you have a general timeframe of</p> <p>24 when Kewazinga contacted Cisco?</p> <p>25 A Unfortunately, no, I don't. I don't</p>

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<p style="text-align: right;">Page 186</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 confidential.</p> <p>3 BY MS. WEYL:</p> <p>4 Q Just stepping back a couple of</p> <p>5 questions, you had noted that this document has</p> <p>6 "Confidential- Not for dissemination" on the</p> <p>7 bottom; right?</p> <p>8 A I do see that.</p> <p>9 Q So if you -- if Kewazinga provided a</p> <p>10 document to Google that contained confidential</p> <p>11 information, it would have been marked</p> <p>12 confidential; is that correct?</p> <p>13 MR. DESAI: Objection to form.</p> <p>14 THE WITNESS: I'm not sure that</p> <p>15 that's necessarily correct. Sometimes when</p> <p>16 you've developed a relationship with a</p> <p>17 company and the company is expressing</p> <p>18 interest in receiving more documents,</p> <p>19 there's an element of trust that gets</p> <p>20 created. It's possible that not every</p> <p>21 document is marked in that manner, but I do</p> <p>22 recall many of these documents being marked</p> <p>23 in that manner. And I think that it's very</p> <p>24 clear that we were presenting</p> <p>25 forward-looking concepts and business</p>	<p style="text-align: right;">Page 188</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 a Non-Disclosure Agreement, because as I sit</p> <p>3 here right now, I cannot recall that level</p> <p>4 of detail.</p> <p>5 BY MS. WEYL:</p> <p>6 Q If I asked you back in 2013, would you</p> <p>7 have a better recollection?</p> <p>8 MR. DESAI: Objection to form.</p> <p>9 THE WITNESS: I'm not sure that I</p> <p>10 would have had a better recollection.</p> <p>11 BY MS. WEYL:</p> <p>12 Q Going back to Exhibit 11 on that</p> <p>13 Strategic Overview slide, you indicated there</p> <p>14 were multiple things that were confidential in</p> <p>15 nature.</p> <p>16 So is my understanding correct that</p> <p>17 the first bullet which says, "Incorporate</p> <p>18 Navigable Video into Google Pack" is considered</p> <p>19 confidential?</p> <p>20 MR. DESAI: Objection to form.</p> <p>21 Mischaracterizes prior testimony.</p> <p>22 THE WITNESS: I think the notion</p> <p>23 of any company proposing to a different</p> <p>24 company that the inclusion of their</p> <p>25 technology might add value is potentially a</p>
<p style="text-align: right;">Page 187</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 opportunities that we would never share with</p> <p>3 a competitor.</p> <p>4 BY MS. WEYL:</p> <p>5 Q Did Kewazinga have a Non-Disclosure</p> <p>6 Agreement with Google?</p> <p>7 MR. DESAI: Objection to form.</p> <p>8 THE WITNESS: I -- as I sit here,</p> <p>9 I don't recall if there was an NDA. There</p> <p>10 may not have been, but I don't remember.</p> <p>11 BY MS. WEYL:</p> <p>12 Q Did Kewazinga have Non-Disclosure</p> <p>13 Agreements with other companies it was talking to</p> <p>14 in the 2005 and 2006 timeframe?</p> <p>15 A As I --</p> <p>16 MR. DESAI: Objection.</p> <p>17 THE WITNESS: Sorry. We have some</p> <p>18 latency here.</p> <p>19 MR. DESAI: Objection to form.</p> <p>20 I'll just note that the prior question</p> <p>21 didn't have the 2005/2006 timeframe point in</p> <p>22 it. Go ahead. You can answer.</p> <p>23 THE WITNESS: I'm not in a</p> <p>24 position to answer the question as to</p> <p>25 whether or not any other company had signed</p>	<p style="text-align: right;">Page 189</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 confidential piece of information.</p> <p>3 BY MS. WEYL:</p> <p>4 Q So by "technology," Navigable Video is</p> <p>5 what you're saying refers to Kewazinga</p> <p>6 technology?</p> <p>7 MR. DESAI: Objection to form.</p> <p>8 THE WITNESS: Yes, I would say</p> <p>9 Navigable Video is -- was the technology</p> <p>10 that I'm referring to.</p> <p>11 BY MS. WEYL:</p> <p>12 Q And that first bullet point,</p> <p>13 "Incorporate Navigable Video into Google Pack" is</p> <p>14 Kewazinga confidential information; is that</p> <p>15 correct?</p> <p>16 MR. DESAI: Objection to form.</p> <p>17 THE WITNESS: As I said, I think</p> <p>18 the notion of including one company's</p> <p>19 technology into another company's offering</p> <p>20 can possibly be construed as or</p> <p>21 characterized as confidential.</p> <p>22 BY MS. WEYL:</p> <p>23 Q But that first bullet point doesn't</p> <p>24 have any technical details in it; does it?</p> <p>25 MR. DESAI: Objection to form.</p>



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<p style="text-align: right;">Page 222</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 to communicate.</p> <p>3 BY MS. WEYL:</p> <p>4 Q And Mr. Worley kept you in the loop of</p> <p>5 the communications that occurred between Google</p> <p>6 and Kewazinga; correct?</p> <p>7 THE WITNESS: Saunak, if you</p> <p>8 you're saying something, I can't hear you.</p> <p>9 MR. DESAI: Objection, form.</p> <p>10 THE WITNESS: I'm sorry. I've</p> <p>11 lost my train of thought. Could you please</p> <p>12 repeat that question?</p> <p>13 BY MS. WEYL:</p> <p>14 Q Certainly. Mr. Worley kept you in the</p> <p>15 loop of communications that occurred between</p> <p>16 Google and Kewazinga; correct?</p> <p>17 MR. DESAI: Same objection.</p> <p>18 THE WITNESS: Yes, I would say</p> <p>19 that that statement is correct.</p> <p>20 BY MS. WEYL:</p> <p>21 Q Okay. And in the 2005 to 2006</p> <p>22 timeframe, did Kewazinga reach out to other</p> <p>23 companies?</p> <p>24 MR. DESAI: Objection to form.</p> <p>25 THE WITNESS: Yes, during that</p>	<p style="text-align: right;">Page 224</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 were interested in Kewazinga's technology?</p> <p>3 MR. DESAI: Objection to form.</p> <p>4 THE WITNESS: Initially Verizon</p> <p>5 did express interest in the technology, but</p> <p>6 ultimately I believe that they decided it</p> <p>7 didn't dovetail effectively with their</p> <p>8 strategy.</p> <p>9 BY MS. WEYL:</p> <p>10 Q And did Microsoft express interest in</p> <p>11 Kewazinga's technology in the 2005/2006</p> <p>12 timeframe?</p> <p>13 MR. DESAI: Objection to form.</p> <p>14 THE WITNESS: Yes, I would say</p> <p>15 that they definitely expressed interest in</p> <p>16 it.</p> <p>17 BY MS. WEYL:</p> <p>18 Q So when I asked you earlier, I asked</p> <p>19 if you thought -- so when I asked you earlier</p> <p>20 about whether you thought Google acted</p> <p>21 appropriately in the 2005/2006 timeframe, you</p> <p>22 indicated that it was possible that Google went</p> <p>23 ahead and possibly used some of Kewazinga's</p> <p>24 technology in its own products; is that correct?</p> <p>25 MR. DESAI: Objection to form.</p>
<p style="text-align: right;">Page 223</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 timeframe, other companies were contacted.</p> <p>3 BY MS. WEYL:</p> <p>4 Q And what other companies were</p> <p>5 contacted?</p> <p>6 A Well I can't be sure of the exact</p> <p>7 dates, but we've covered this ground already. If</p> <p>8 you'd like, I'll repeat the names of those</p> <p>9 companies.</p> <p>10 Q Thank you. That would be appreciated.</p> <p>11 A I believe Cisco and Verizon and</p> <p>12 Microsoft were contacted in this timeframe, but I</p> <p>13 cannot be exactly sure of the timeline of when</p> <p>14 those companies were contacted.</p> <p>15 Q And did Cisco express interest in</p> <p>16 Kewazinga's technology in the 2005/2006</p> <p>17 timeframe?</p> <p>18 MR. DESAI: Objection to form.</p> <p>19 THE WITNESS: I don't recall the</p> <p>20 exact nature of the communication that we</p> <p>21 had with them, but my recollection is that</p> <p>22 it didn't dovetail with any of their</p> <p>23 initiatives at the time.</p> <p>24 BY MS. WEYL:</p> <p>25 Q And did Verizon represent that they</p>	<p style="text-align: right;">Page 225</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 THE WITNESS: I'm not sure that I</p> <p>3 was specific about the technology part in</p> <p>4 terms of their bad actor status. I would</p> <p>5 say that they used some of Kewazinga's</p> <p>6 forward ideas and business opportunities in</p> <p>7 their own product after they met with us.</p> <p>8 BY MS. WEYL:</p> <p>9 Q And specifically what ideas did they</p> <p>10 incorporate -- did Google incorporate into its</p> <p>11 own products?</p> <p>12 A Well I would say that they would</p> <p>13 include, but not necessarily be limited to</p> <p>14 incorporating Navigable Video into Google Earth,</p> <p>15 as well as Google Maps as an on-the-ground</p> <p>16 extension of those products.</p> <p>17 I would say that it also included</p> <p>18 providing travel destinations and cultural</p> <p>19 destinations, and museums and possibly zoos and</p> <p>20 aquariums and other interior building locations</p> <p>21 as additional navigable experiences.</p> <p>22 I would say that they also provided</p> <p>23 experiences that I believe were captured on</p> <p>24 boats, on waterways, that was also part of the</p> <p>25 documentation that we provided to them, but,</p>



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<p style="text-align: right;">Page 226</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 again, it's not limited to that, and a more</p> <p>3 thorough investigation would have to be made.</p> <p>4 But we clearly said to them, and I</p> <p>5 believe that this sentence is included in a</p> <p>6 number of the papers that we sent to them, that</p> <p>7 miniaturized Kewazinga systems would be placed</p> <p>8 atop cars and boats that would ply the streets</p> <p>9 and waterways in order to provide navigable</p> <p>10 experiences. And to that extent, I think Google</p> <p>11 went ahead and took a lot of the forward-looking</p> <p>12 ideas that Kewazinga presented it and used it in</p> <p>13 their own product.</p> <p>14 Q Are any of those things covered by</p> <p>15 Kewazinga's patents?</p> <p>16 MR. DESAI: Objection to form.</p> <p>17 THE WITNESS: I don't know whether</p> <p>18 they're covered by the patents. I'm not</p> <p>19 sure that they are.</p> <p>20 BY MS. WEYL:</p> <p>21 Q Do you know if Google had the idea for</p> <p>22 Street View before Kewazinga ever emailed Google</p> <p>23 in the 2005/2006 timeframe?</p> <p>24 MR. DESAI: Objection to form.</p> <p>25 THE WITNESS: I can't know it for</p>	<p style="text-align: right;">Page 228</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 included in the Kewazinga patents?</p> <p>3 MR. DESAI: Objection to form.</p> <p>4 Foundation. And, I mean, I think that's</p> <p>5 confusing a lot of different questions that</p> <p>6 were asked in the previous 10 to 15 minutes.</p> <p>7 You can answer the question.</p> <p>8 THE WITNESS: I think the</p> <p>9 documents that were provided by Kewazinga to</p> <p>10 Google, some of which or maybe possibly many</p> <p>11 of which were marked as confidential and do</p> <p>12 not distribute presented many</p> <p>13 forward-looking concepts and business</p> <p>14 opportunities to Google that Kewazinga</p> <p>15 thought that they could help to offer to</p> <p>16 Google and to extend Google's ecosystem, if</p> <p>17 you will. Their software ecosystem.</p> <p>18 BY MS. WEYL:</p> <p>19 Q Did Kewazinga --</p> <p>20 A Excuse me. May I finish?</p> <p>21 Q Yes, you may.</p> <p>22 A In those documents -- or I should say</p> <p>23 in many of those documents, Kewazinga clearly</p> <p>24 marked its patents by title of the patent, and I</p> <p>25 think more than one patent the title was</p>
<p style="text-align: right;">Page 227</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 sure, but I might have been exposed to a</p> <p>3 piece of information that suggested that</p> <p>4 they might have done some preliminary work</p> <p>5 before we contacted them, although we never</p> <p>6 knew that they had done preliminary work,</p> <p>7 and they never disclosed any preliminary</p> <p>8 work that was similar to our invention to</p> <p>9 us, either by email or in a telephone call.</p> <p>10 BY MS. WEYL:</p> <p>11 Q So in my previous question -- sorry.</p> <p>12 I want to get this straight.</p> <p>13 I asked you if any of the things that</p> <p>14 you mentioned were covered by the Kewazinga</p> <p>15 patents, and you said that you didn't know; is</p> <p>16 that correct?</p> <p>17 MR. DESAI: Objection.</p> <p>18 THE WITNESS: That's correct. I'm</p> <p>19 sorry, that is correct.</p> <p>20 BY MS. WEYL:</p> <p>21 Q And so none of those ideas that you</p> <p>22 conveyed were related to the Kewazinga patents,</p> <p>23 and so how would Google have disclosed what it</p> <p>24 was doing in relation to the invention if all of</p> <p>25 the features that you discussed about were not</p>	<p style="text-align: right;">Page 229</p> <p>1 L. Smalheiser - CONFIDENTIAL</p> <p>2 presented. I believe that claims were also</p> <p>3 either described or excerpted. I think issue</p> <p>4 dates of the patents are also included in some or</p> <p>5 many of those documents. And I think</p> <p>6 descriptions of the patents are included in many</p> <p>7 or some of those documents.</p> <p>8 And so you have a situation where</p> <p>9 forward business concepts are being provided.</p> <p>10 Evidence of the patents, including their title,</p> <p>11 issuance date, claim information and general</p> <p>12 descriptions are disclosed. And I think that</p> <p>13 Google used that information to further their own</p> <p>14 product without disclosing at any point during</p> <p>15 that time to Kewazinga that they had a competing</p> <p>16 product that was in development.</p> <p>17 Q Can you point to me some documents</p> <p>18 that Kewazinga provided to Google that included</p> <p>19 the title, issuance, date and general information</p> <p>20 about the Kewazinga patents?</p> <p>21 MR. DESAI: Objection to form, and</p> <p>22 as to how the witness would possibly do that</p> <p>23 right now electronically. You can put</p> <p>24 documents in front of him and ask him</p> <p>25 questions about that.</p>

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